

Entered on Docket

June 19, 2012

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: June 18, 2012



Dennis Montali

DENNIS MONTALI
UNITED STATES BANKRUPTCY COURT
U.S. Bankruptcy Judge

NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
ROLAND LUIS CAMPOS,) No. 11-32522DM
Debtor.)

ARTHUR STOPES, III,) Adversary Proceeding
Plaintiff,) No. 11-3193DM
v.)
ROLAND LUIS CAMPOS,)
Defendant.)

MEMORANDUM DECISION RE NONDISCHARGEABILITY

I. INTRODUCTION¹

The Plaintiff, Arthur Stopes, III ("Stopes"), filed a complaint on October 6, 2011, against Debtor Roland Luis Campos ("Campos"), seeking to except from discharge Campos's debt to him under section 523(a)(4).² For the reasons stated below, the court finds the existence of an express trust and defalcation while

¹ This Memorandum Decision constitutes the court's findings of fact and conclusions of law pursuant to Federal Rules of Bankruptcy Procedure, Rule 7052(a).

² Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Campos was acting in a fiduciary capacity; therefore, his debt to
2 Stopes is nondischargeable under section 523(a)(4).

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Stopes and Campos have been acquaintances since meeting each
5 other some time before 1998. On February 25, 2002, Stopes sent a
6 letter to Campos outlining an "interim banking arrangement,"
7 whereby Stopes was to give checks to Campos to cash and keep "for
8 safe retention" ("Letter"). (Exhibit 1). A week later, on March
9 4, 2002, Campos formalized the arrangement with Stopes by signing
10 an Agreement and Declaration ("Agreement"), which had the word
11 "Fiduciary" printed under the signature line (Exhibit 2). These
12 two items comprised the documentation of this banking arrangement.
13 In the Agreement, Campos agreed to cash checks and hold funds for
14 Stopes in Campos's personal bank account, to keep a parallel
15 record of Stopes's funds, and to give notice to Stopes of any
16 changes affecting the specified bank account or Campos's mailing
17 location.

18 Evidence showed that ten checks were issued to "Arthur
19 Charles Stopes or Roland Campos" in various amounts in 2002, and
20 Campos signed accompanying notes to the checks indicating the
21 deposits were in accordance with the Agreement. (Exhibit 3). An
22 email dated August 23, 2007, showed that Campos represented he
23 held a total of \$51,328.06 in payments from Stopes. (Exhibit 4).

24 On December 16, 2007, Campos signed and gave Stopes a
25 statement acknowledging that he no longer held any of \$51,328.06
26 amount for Stopes, and that the funds were misused by Campos.
27 (Exhibit 6). Subsequently, Campos made several payments to Stopes
28 on the outstanding amount. Both parties agree that the current

1 outstanding amount of the debt is \$42,421.10. (Exhibit 14). In
2 response to the Plaintiff's Request for Admissions, Campos
3 admitted to the outstanding amount currently in question and that
4 the missing funds were used for Campos's personal expenses.
5 (Exhibit 14).

6 Campos filed for Chapter 7 bankruptcy on July 7, 2011, and
7 Stopes subsequently commenced this adversary proceeding on October
8 6, 2011, to determine the nondischargeability of the outstanding
9 amount of this debt. On March 5, 2012, Stopes filed a motion for
10 summary judgement against Campos. The court held a hearing on the
11 motion on April 13, 2012, and then granted the motion in part and
12 denied it in part, narrowing the scope of the inquiry at trial to
13 two issues related to finding an express trust:

14 (1) Was there an intention to create a trust?

15 (2) If there was a trust, was it created for a lawful
16 purpose?

17 A trial was conducted on June 4, 2012, on the two issues
18 above, and the court took the matter into submission.

19 III. DISCUSSION

20 The three elements for finding a nondischargeable debt under
21 section 523(a)(4) are: (1) that an express trust was in existence,
22 (2) that a debt was created by fraud or defalcation, and lastly,
23 (3) that the debtor was acting in a fiduciary role to the creditor
24 at the time the debt was created. Otto v. Niles (In re Niles),
25 106 F.3d 1456, 1459 (9th Cir. 1997). In a section 523(a)(4)
26 action, the plaintiff has the burden of proving the existence of a
27 trust and any defalcations by a preponderance of the evidence.
28 Punton v. Chapman (In re Chapman), 125 B.R. 284, 287 (Bankr. S.D.

1 Cal. 1991) (citing Grogan v. Garner, 495 U.S. 279, 284 n.11
2 (1991)).

3 **(1) Existence of an Express Trust**

4 While the meaning of "fiduciary" in the context of section
5 523(a)(4) is an issue of federal law, state law is used to
6 determine if a trust exists. Lewis v. Short (In re Short), 818
7 F.2d 693, 695 (9th Cir. 1987). In California, an express trust
8 requires the following: (1) a present intent to create a trust,
9 (2) a trustee, (3) trust property, (4) a proper legal purpose, and
10 (5) a beneficiary. Honkanen v. Hopper (In re Honkanen), 446 B.R.
11 373, n.6 (9th Cir. BAP 2011) (citing Cal. Prob. Code §§
12 15201-15205).

13 On the issue of proper legal purpose, Campos argued that
14 Stopes had created the banking arrangement with him in order to
15 evade federal income taxes. (Def. Trial Br.). Stopes testified
16 that he did not believe he owed any taxes at the time the
17 documents were signed and that he created the banking arrangement
18 because he did not trust banks. Because Stopes requested that the
19 payments be placed in a bank account under Campos's name, it is
20 unlikely that Stopes's distrust of banks is the true reason for
21 establishing the arrangement. While Campos offered circumstantial
22 evidence about Stopes's motives during the trial, he did not prove
23 that the avoidance of taxes was one of Stopes's reasons for
24 creating the arrangement. Therefore, the court does not find an
25 illegal purpose in the formation of the agreement.

26 Separately, when looking at intent, California does not
27 require any specific words to create a trust. Kornbau v. Evans,
28 66 Cal. App. 2d 677, 684 (1944). Whether there was intention to

1 create a trust is a question of fact and is ascertained from the
2 parties' words and actions concerning the transaction.

3 Petherbridge v. Prudential Sav. & Loan Assn., 79 Cal. App. 3d 509,
4 517 (1978). Additionally, where the transfer of property or money
5 is intended to create a trust, the payor retains the beneficial
6 interest in the money paid. Id.

7 In the present case, the intention of Stopes to create a
8 trust is expressed in the two documents that govern the
9 arrangement. First, the language in the Letter demonstrated
10 Stopes's intent to create a trust because he requested Campos's
11 assistance for "safe retention of his money" for Stopes's
12 "personal use." (See Exhibit 1). This language is consistent
13 with an intention on Stopes's part to retain the beneficial
14 interest in the payment. Second, the language in the Agreement,
15 which the Campos signed, also specified that the amounts deposited
16 would be reserved for Stopes's use. (See Exhibit 2).
17 Additionally, Stopes testified during the trial that he intended
18 for this agreement to be a trust, and this statement was
19 uncontroverted.

20 Campos argued that the Letter and the Agreement were
21 inconsistent with each other based on a sentence in the Letter
22 from Stopes that stated "If my monies may be of some assistance to
23 you, possibly in a mutually beneficial way, could we work together
24 toward that end?" (Exhibit 1). In Petherbridge, the court did
25 not find a trust because the language of the agreement gave the
26 payee the unilateral power to choose between holding the payments
27 in trust or applying the funds to a promissory note held by the
28 payee. See 79 Cal. App. 3d at 520 ("Such a power is inconsistent

1 with the fiduciary duties of a trustee and . . . suggests
2 defendant was not truly intended to be a trustee."). This case is
3 distinguishable from Petherbridge because the language Campos
4 relies on does not show that the Stopes granted him power that was
5 inconsistent with the duties of a trustee. (See Exhibit 1). The
6 statement is only an agreement to possibly agree in the future.
7 The sentence by itself does not grant any rights to Campos to
8 unilaterally use the funds for his own benefit, and other language
9 in the two documents indicates a trustee-beneficiary relationship.
10 (See Exhibit 1; Exhibit 2). In addition, by signing the Agreement
11 with "Fiduciary" appearing under his name (Exhibit 2), cashing the
12 checks for Stopes with written confirmation that the actions were
13 done in accordance with the Agreement (Exhibit 3), and
14 representing by email that he held a specific amount of money for
15 Stopes (Exhibit 4), Campos's actions indicated he intended to take
16 on the enumerated responsibilities in an arrangement consistent
17 with an express trust.

18 **(2) Debt was Created by Defalcation**

19 Defalcation in section 523(a)(4) is a "misappropriation of
20 trust funds or money held in any fiduciary capacity; [the]
21 failure to properly account for such funds." Lewis v. Scott (In
re Lewis), 9 F.3d 1182, 1186 (9th Cir. 1996). This includes "the
23 innocent default of a fiduciary who fails to account fully for
24 money received," so even if Campos's actions were completely
25 innocent, which they do not appear to be, defalcation can still
26 exist. See id. Campos admitted in email on August 23, 2007, that
27 he held \$51,328.06 for Stopes through this private arrangement;
28 that as of December 16, 2007, he no longer held any of these funds

1 for Stopes; and that the funds were misused. (Exhibit 4; Exhibit
2 6). Because Campos did not present evidence to otherwise account
3 for the funds he received from Stopes under this arrangement, and
4 because he admitted to misusing the funds for personal expenses,
5 this court concludes that the debt in question was created by
6 defalcation.

7 **(3) Debtor was in a Fiduciary Role to the Creditor**

8 If there is an express trust between the debtor and another
9 party, and the debtor has trustee status, then the debtor is
10 considered a fiduciary under section 523(a)(4). Woodworking
11 Enter., Inc. v. Baird (In re Baird), 114 B.R. 198, 202 (9th Cir.
12 BAP 1990). Also, the fiduciary obligations arising from the trust
13 agreement "must be imposed before any wrongdoing." Ragsdale v.
14 Haller, 780 F.2d 794, 796 (9th Cir. 1986). Because an express
15 trust exists here under California law for the reasons above, the
16 Campos was in a fiduciary role beginning from the signing of the
17 Agreement and Declaration on March 4, 2002 (Exhibit 2) and was in
18 the fiduciary role when he misappropriated the funds.
19 Consequently, defalcation exists under section 523(a)(4).

20 **(4) Financial Elder Abuse**

21 Stopes alleged that Campos's actions constituted financial
22 abuse of an elder under Cal. Welf. & Inst. Code section 15610.30,
23 and consequently, he is entitled to an award of his attorney's
24 fees under section 15657.5(a), which provides for an award of
25 attorney's fees and costs to the winning plaintiff in elder
26 financial abuse cases. The court agrees with this request.

27 Cal. Welf. & Inst. Code section 15610.30 was amended in 2008,
28 and the amendment was considered "a material change in the

1 statutory definition of financial abuse." Das v. Bank of Am.,
2 N.A., 186 Cal. App. 4th 727, 737 (2010). Because Campos's actions
3 occurred before the effective date of the amendment, January 1,
4 2009, this court evaluated this claim under the previous version
5 of the statute that was effective at the time of his actions. See
6 id. ("As the 2008 amendments to the statutory scheme were
7 substantive . . . and the legislature did not state that the
8 amendments were retroactive in effect, they are inapplicable to
9 appellant's claims.").

10 Financial abuse under the unamended section 15610.30 is
11 defined as when a person "takes, secretes, appropriates, or
12 retains real or personal property of an elder . . . to [sic] a
13 wrongful use or with intent to defraud, or both." Cal. Welf. &
14 Inst. Code § 15610.30(a)(1). Wrongful use is defined as
15 performing the above actions in bad faith. § 15610.3(b) (amended
16 2008). Under section 15610.3(b)(1), a person is deemed to have
17 acted in bad faith if he "knew or should have known that the elder
18 . . . had the right to have the property transferred or made
19 readily available to the elder . . . or to his or her
20 representative."

21 Campos's actions were performed in bad faith under the
22 statutory definition. In his fiduciary capacity under the Letter
23 and Agreement, he knew or should have known that the beneficial
24 interest remained with Stopes, and therefore Stopes retained the
25 right to have the property transferred or made readily available
26 for his personal use. (See Exhibit 1; Exhibit 2). Additionally,
27 Campos's misuse of Stopes's payments constitutes "appropriating"
28

1 under the statute using the plain dictionary meaning of the word.³
2 See Negrete v. Fidelity & Guar. Life Ins. Co., 444 F.Supp. 2d 998,
3 1002 n4 (C.D. Cal. 2006) (noting that the plaintiff's allegations
4 are sufficient to state a claim for financial elder abuse, using
5 the ordinary dictionary meaning of "taking"). Therefore, Campos's
6 admission of misusing Stopes's payments qualified as financial
7 elder abuse under the statutory definition.

8 **IV. CONCLUSION**

9 Based on the foregoing reasons, Stopes's claim against Campos
10 shall be nondischargeable under section 523(a)(4), and Stopes is
11 entitled to a judgment in the amount of \$42,421.10. The evidence
12 shows both the existence of an express trust and that defalcation
13 occurred while Campos was in a fiduciary role for this trust.

14 Attorney's fees will be awarded to Stopes based on a claim for
15 financial elder abuse, as defined in section 15610.30 of the Cal.
16 Welf. & Inst. Code. Plaintiff's counsel should file a motion for
17 attorney's fees within 14 days of entry of judgment, in accordance
18 with N.D. Cal. Civ. L.R. 54-5, incorporated by B.L.R. 1001-2(a).

19 Plaintiff's counsel should upload an order consistent with this
20 memorandum decision and comply with B.L.R. 9021-1.

21
22 **END OF MEMORANDUM DECISION**
23
24
25

26 ³ (3) To take or make use of without authority or right.
27 (Merriam-Webster Online), see:
28 <http://www.merriam-webster.com/dictionary/appropriating>, last
visited June 17, 2012.

1 COURT SERVICE LIST

2 Roland Luis Campos
2582 31st Avenue
3 San Francisco, CA 94116

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